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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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LEE & HAYES, PLLC
601 W. RIVERSIDE AVENUE
SUITE 1400
SPOKANE, WA 99201

EXAMINER	
SALCE, JASON P	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/465,529	OMOIGUI, NOSAKHARE D.	
	Examiner	Art Unit	
	Jason P. Salce	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,8-13,15,18,19,25-37 and 39-43* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,8-13,15,18,19,25-37 and 39-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/16/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/03/2008 have been fully considered but they are not persuasive.

The examiner notes that after further consideration of the Menard prior art reference and the amended claims that the Menard prior art reference still reads on the amended claims (**see rejection below**).

After further review of the amendments in the instant application, in addition to the identical amendments made to the claims in the 10/969,302 and 10/969,306 applications, the Examiner has further provided a double patenting rejection below.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 5, 8-13, 15, 18-19, 25-37 and 39-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 11-13, 15, 20-23, 25-27, 29 and 32-35 of copending Application No. 10/969,306. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application are broader than the claims in copending Application No. 10/969,306 which claims a system that performs the viewing management method claimed in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Referring to claims 1-3, 5 and 8-10 of the instant application, see claims 1-3, 5 and 8-10 of the '306 application.

Referring to claims 11-13, 15 and 18-19 of the instant application, see claims 11-13, 15 and 18-19 of the '306 application.

Referring to claims 25-31 of the instant application, see claims 25-33 of the '306 application.

Referring to claims 32-35 and 37 of the instant application, see claims 30-33 and 35 of the '306 application.

Referring to claims 39-43 of the instant application, see claims 37-38, 11, 22 and 26 of the '306 application.

Claims 1-3, 5, 8-13, 15, 18-19, 25-37 and 39-43 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 7-10, 12 and 15-19 of copending Application No. 10/969,302. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application are broader than the claims in copending Application No. 10/969,302 which claims a computer readable media that executes the viewing management method claimed in the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Referring to claims 1-3, 5 and 8-10 of the instant application, see claims 1-3, 5 and 7 of the '302 application.

Referring to claims 11-13, 15 and 18-19 of the instant application, see claims 1-3, 5 and 7 of the '302 application.

Referring to claims 25-28 and 31-33 of the instant application, see claims 15-19 of the '302 application.

Referring to claims 34-37 and 39-40 of the instant application, see claims 15-19 of the '302 application.

Referring to claims 41-43 of the instant application, see claims 1-3, 5, 7 and 15-19 of the '302 application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 9-13, 15, 18-19, 25-27, 29-37 and 29-41 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Menard et al. (U.S. Patent No. 6,810,526).

Referring to claim 1, Menard discloses a system (**see Figure 1**).

Menard also discloses means for simultaneously monitoring two or more electronic presentations that are concurrently broadcast (**see Column 3, Lines 5-9 for simultaneously monitoring each channel by the use of separate servers 8 in Figure 1**), wherein said monitoring comprises monitoring data that does not comprise content that can be presented to a viewer (**see Column 2, Line 60 through Column 3, Line 4 and Column 4, Lines 12-16 and Column 4, Lines 47-57 for the monitoring comprising the use of time-tagged text streams, which are only used by the servers 4 and 8 and are not displayed to the user**).

Menard also discloses means for automatically switching between displays of the two or more electronic presentations based upon viewer-defined parameters (**see Column 3, Lines 33-39 for causing PC 7 or a television set to change channels based upon an alert signal sent to the user, where the alert signal is triggered based on the user's request (or requests) to view television programs with Bill**

Clinton talking about the Middle East (see Column 3, Lines 33-40)), wherein the viewer-defined parameters comprise:

a viewer defined event, wherein the viewer defined event occurs within a specified presentation and the viewer defined event describes an activity or action that takes place within the specified electronic presentation (**see Column 3, Lines 20-25 for a preference being the Middle East and Bill Clinton, which defines a viewer defined event that identifies the action of Bill Clinton talking about the Middle East (see Column 3, Lines 20-26)**).

a viewer defined preference, wherein the viewer defined preference is a specified value assigned to the viewer defined event that occurs within the specified electronic presentation, the specified value assigned to the viewer defined event being assigned a value by the viewer (**see Column 3, Lines 28-32 for the viewer further assigning a value to the search that specifies which channels should be included in the search, for example only search news channels (wherein the terms "news" is the value)**).

Referring to claim 2, Menard discloses that the viewer-defined event is defined in terms of specific electronic presentation titles (**see again Column 3, Lines 20-25 where the preferences Clinton and Middle East are used to find programs (that contain titles) where Bill Clinton talks about the Middle East, therefore the preferences Clinton and Middle East are defined in terms of specific electronic presentation titles that contain Bill Clinton talking about the Middle East**).

Referring to claim 3, Menard discloses that the viewer-defined event is defined in terms of topics that can occur within electronic presentations (**see Column 3, Lines 20-25 for a preference being Middle East, which is a topic**).

Referring to claim 5, see the rejection of claims 3. Claim 5 further recites that the viewer defined events are defined in terms of events that can occur within the specified electronic presentations. The Examiner notes that rejection of claims 1-3 for teaching that the events occur within a specified electronic presentation.

Referring to claims 9-10, see the rejection of claim 1 and Figures 1-2.

Referring to claims 11-13, 15 and 18-19, see the rejection of claims 1-3, 5 and 18-19, respectively. Further note that in regards to claim 11, Menard further discloses automatically notifying a viewer when an electronic presentations satisfies a viewer-defined parameter (**see Column 2, Lines 14-29 for sending an alert when a profile match has occurred**).

Referring to claim 25, Menard discloses a viewing management method for managing viewing of multiple live electronic presentations (**see the rejection of claim 1**).

Menard also discloses means for receiving and sending at least one viewer request from one or more viewers to an encoder (**see Column 4, Lines 47-57 for search engine 21 in Figure 2 receiving the viewer request stored in the user profile in memory 20**), the viewer request containing one or more viewer-defined parameters are to be used to evaluate a plurality of electronic presentations (**see the viewer-defined preference in the rejection of claim 1**), wherein the viewer-defined parameters comprise:

> a viewer defined event, wherein the viewer defined event occurs within a specified presentation and the viewer defined event describes an activity or action that takes place within the specified electronic presentation (**see Column 3, Lines 20-25 for a preference being the Middle East and Bill Clinton, which defines a viewer defined event that identifies the action of Bill Clinton talking about the Middle East (see Column 3, Lines 20-26)**).
>
> a viewer defined preference, wherein the viewer defined preference is a specified value assigned to the viewer defined event that occurs within the specified electronic presentation, the specified value assigned to the viewer defined event being assigned a value by the viewer (**see Column 3, Lines 28-32 for the viewer further assigning a value to the search that specifies which channels should be included in the search, for example only search news channels (wherein the terms "news" is the value)**).

Menard also discloses means for evaluating a plurality of live electronic presentations using the viewer-defined parameters (**see again Column 4, Lines 47-57**

for search engine 21 being used to determine if a viewer-defined preference is satisfied), wherein evaluating comprises at least monitoring data that does not comprise content that can be presented to a viewer (**see the rejection of claim 1**) and wherein an activity or action can pertain to a character or person in at least one of said electronic presentations (**see Column 3, Lines 20-25 for a preference being the Middle East and Bill Clinton, wherein the activity pertaining to a person is Bill Clinton talking about the Middle East**).

Menard also discloses that in the event that one or more of the viewer-defined parameters is satisfied, notifying a viewer that is associated with the viewer-defined parameter was satisfied (**see again Column 3, Lines 33-39 and the rejection of claim 11**).

Referring to claim 26, Menard discloses that notifying comprises automatically displaying the electronic presentation that satisfied the viewer-defined parameter (**see Column 3, Lines 38-39**).

Referring to claim 27, see Column 3, Lines 33-39 in the rejection of claim 25.

Referring to claim 29, Menard also discloses that said receiving is performed by a server that is programmed to receive the viewer requests and notify the viewers (**see Column 4, Lines 21-24 for setting up the viewer profile in memory 20 prior to**

sending the viewer profile request to search engine 21 and Column 3, Lines 33-39 for sending the notification to the viewer).

Referring to claim 30, see the rejection of claim 29 and further note that the server of Menard is further used to evaluate the live electronic presentations (**see Column 4, Lines 47-57 for the notification of profile data being transmitted/sent from memory 20 to search engine 21 in Figure 3 and see again Column 4, Lines 47-57 for receiving a notification of profile data from memory 20 to search engine 21 in Figure 3**).

Referring to claim 31, Menard discloses receiving information describing the electronic presentation as they are broadcast (**see Column 4, Lines 12-13 for receiving the time-tagged text stream from LAN 14 previously described by the examiner in the rejections above**), receiving updated information describing the electronic presentations as they are being broadcast (**see Column 4, Lines 47-49 for the text stream continually being sent over LAN 14, thereby continually updating the text streams from the television program in order for a profile match from the profile data stored in memory 20 to occur**) and evaluating all of the information that is received in light of the viewer-defined preferences (**see again Column 4, Lines 47-57 for evaluating all of the incoming text-tagged data streams against the user's profiles stored in memory 20**).

Referring to claims 32-33, see the rejection of claims 9-10, respectively.

Referring to claims 34-35, see the rejection of claim 25.

Referring to claim 36, see the rejection of claim 26.

Referring to claims 37 and 39-40, see the rejection of claim 2-3 and 9, respectively.

Referring to claim 41, see the rejection of claim 1 and further note Figures 1-2 for the computing and client devices used in the system of Menard.

Referring to claim 42, see the rejection of claim 27.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8, 18, 28 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menard et al. (U.S. Patent No. 6,810,526) in view of Alexander et al. (U.S. Patent No. 6,177,931).

Referring to claim 8, Menard discloses all of the limitations of claim 1, but is silent as to the specific display of the detected television programs, thereby failing to teach

that the automatic switching comprises enabling a PIP display for the viewer in which at least two of the electronic presentations are contemporaneously displayed for the viewer.

Alexander teaches a method for collecting viewer profile information at a central server similar to the method of Menard (**see Column 29, Lines 12-67**) and using the profile information to display specific electronic presentations to the viewer (**see Column 31, Lines 25-33 or Column 32, Line 61 through Column 33, Line 8**).

Alexander further teaches using the profile information/viewer-defined preferences to automatically switch using a PIP display for the viewer in which at least two electronic presentations are contemporaneously displayed for the viewer (**see Column 31, Lines 9-24**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the television display, as taught by Menard, using the PIP display functionality, as taught by Alexander, for the purpose of providing improved features to the EPG display and navigation, improved opportunities for the commercial advertiser to reach the viewer (**see Column 2, Lines 5-15 of Alexander**).

Referring to claim 18, see the rejection of claim 8.

Referring to claim 28, see the rejection of claim 8.

Referring to claim 43, see the rejection of claim 8 for displaying indicia containing a live electronic presentation in the form of a PIP window displaying a television program.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/
Primary Examiner, Art Unit 2421

Jason P Salce
Primary Examiner
Art Unit 2421

12/03/2008